

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4715 of 2007()

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(CRIME NO.7 OF 2002 OF THE FEROKE EXCISE RANGE)**

PETITIONERS:ACCUSED 4 AND 5:

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- 1. CHANDRASEKHARAN, S/O.APPUKUTTAN,
AKOMPURATH HOUSE, CHELANNUR, CALICUT.**
 - 2. K.K.MOHANAN, S/O.KUNHI, PERINGOTTU
THAZHAM PARAMBIL, THIRUVANNUR.**

**BY ADV. SRI.V.G.ARUN
SRI.T.R. HARIKUMAR**

RESPONDENT: COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R.BASANT, J.

B.A.No.4715 of 2007

Dated this the 7th day of August 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 4 and 5 in a crime registered alleging violation of the provisions of the Kerala Abkari Act. The crux of the allegations is that members of a trade union, in open defiance of the provisions of the law in an alleged attempt to protest against the policy of the Government, indulged in illicit possession and sale of toddy in front of a closed toddy shop. Accused 1 to 3 are persons who allegedly carried out the sale proper. The petitioners are alleged to be persons who gave the call as district leaders of the union of workmen to resort to that method of protest. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the committal court. Committal proceedings has been registered. Summons has been issued against the petitioners. The petitioners have not so far appeared before the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioners are absolutely innocent. They have no actual role

even admittedly in the alleged sale of toddy. Their role if any is only that they had given the call for a method of protest by carrying out sale of toddy in violation of the provisions of the Act. In any view of the matter, the petitioners who have no actual role in the commission of the offence are not liable to suffer the undeserved trauma of arrest and detention. Petitioners are innocent, it is submitted. They are prepared to appear before the learned Magistrate and face the trial. They apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that notwithstanding the fact that the offence is one to which Section 41A of the Kerala Abkari Act has application, in the facts and circumstances of this case, the prosecution does not want to oppose the application for bail. Investigation is already completed and the contumacious role of the petitioner is only to the extent indicated above.

4. The decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] is authority for the proposition that powers

under Section 438 Cr.P.C can be invoked by a court even after cognizance has taken by the court concerned. In the wake of the categoric submission that the prosecution does not want to oppose the application for bail when the petitioners appear and seek bail, I am satisfied that appropriate directions can be issued under Section 438 Cr.P.C in favour of the petitioners.

5. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioners.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 14/08/2007.

ii) They shall be released on regular bail on condition that they execute bonds for Rs.50,000/-(Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioners shall make themselves available for interrogation before the investigating officer as and when directed by the investigating officer in writing to do so.

(iv) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall

thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(v) If they were arrested prior to 14/08/2007, they shall be released from custody on their executing a bond for Rs.50,000/- (Rupees fifty thousand only) without any sureties, undertaking to appear before the learned Magistrate on 14/08/2007.

(R.BASANT, JUDGE)

jsr

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PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007